

AMENDED IN SENATE JULY 18, 2001

AMENDED IN SENATE JULY 9, 2001

AMENDED IN ASSEMBLY APRIL 26, 2001

AMENDED IN ASSEMBLY APRIL 16, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 57

Introduced by Assembly Member Wright

December 4, 2000

An act to add Section 332.3 to the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 57, as amended, Wright. Electrical energy: contracts.

The Public Utilities Act imposes various duties and responsibilities on the Public Utilities Commission with respect to the purchase of electricity.

This bill would state findings and declarations regarding short-term and long-term contracts for the purchase of electricity and would state the intent of the Legislature with respect to the procurement of electricity by an electrical corporation. The bill would declare the intent of the Legislature that an electrical corporation, as defined, shall create a diversified procurement portfolio consisting of both short-term and long-term electricity and electricity related products.

This bill would amend the act to require the commission to implement an incentive mechanism applicable to an electrical

corporation's procurement of electricity for its customers in accordance with guidelines set forth in the bill. The bill would require the commission to reflect in bundled service rates, and to deem reasonable without engaging in a reasonableness review, any contract entered into by an electrical corporation in accordance with guidelines set forth in the bill.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares that the
2 customers of an electrical corporation, as defined in Section 218
3 of the Public Utilities Code, will benefit by the creation of a
4 diversified procurement portfolio consisting of both short-term
5 and long-term electricity and electricity related products and
6 lessening reliance on the spot markets, including the day-ahead
7 and real time markets. This portfolio will bring needed price
8 stability at reasonable prices to all consumers and may attract new
9 electric supply into the State of California. Procurement
10 responsibilities for the net open positions (load not served by
11 utility retained generation) of the three largest electrical
12 corporations are currently being met by the Department of Water
13 Resources.

14 (b) It is the intent of the Legislature to do all of the following:

15 (1) Provide guidance for the procurement of electricity by an
16 electrical corporation.

17 (2) Direct the Public Utilities Commission to establish
18 standards under which the procurement of electricity and
19 electricity related products by an electrical corporation will be
20 deemed reasonable, and to the extent an electrical corporation
21 requests, require the Public Utilities Commission to provide
22 electrical corporations with an incentive to balance cost and risk
23 goals for procurement.

24 (3) Eliminate the need for after-the-fact reasonableness
25 reviews of an electrical corporation's electricity procurement
26 contracts, practices, and related expenses.

27 SEC. 2. Section 332.3 is added to the Public Utilities Code, to
28 read:



1 332.3. (a) At least 180 days prior to an electrical corporation
 2 resuming procurement responsibility, the commission shall
 3 implement an incentive mechanism applicable to the electrical
 4 corporation's procurement of electricity for its customers,
 5 *including, but not limited to, the format and approaches of a*
 6 *request for proposals (RFP) process.* If the commission fails to
 7 implement an incentive mechanism within the timeframe
 8 prescribed, all purchases entered into by an electrical corporation
 9 shall be deemed reasonable and recoverable in rates until the
 10 commission implements an incentive mechanism. In developing
 11 an incentive mechanism, the commission shall ensure that the
 12 incentive mechanism includes all of the following:

13 (1) Clear, achievable, and quantifiable objectives and
 14 standards.

15 (2) Timely recovery of procurement costs.

16 (3) Balanced risk and reward incentives.

17 (4) Predetermined market-based price benchmarks.

18 (5) Limited risk and reward for an electrical corporation.

19 (6) Safety valves for major market disruptions.

20 (b) The commission shall reflect in bundled service rates, and
 21 deem reasonable without a reasonableness review, any contract
 22 entered into by an electrical corporation in accordance with
 23 subdivision (a), and subdivisions (c) to (j), inclusive, or, through
 24 an application by an electrical corporation that has been approved
 25 by the commission.

26 (c) For purposes of this section, a long-term forward contract
 27 is a contract with a duration of not less than one month.

28 (d) As part of the incentive mechanism implemented pursuant
 29 to subdivision (a), the commission shall deem long-term forward
 30 contracts reasonable if one or more of the following conditions are
 31 met, *or the commission may reject a long-term forward contract*
 32 *without prejudice and designate spot market purchases in lieu of*
 33 *the rejected contract as per se reasonable for the term of the*
 34 *rejected contract or until the commission approves a replacement*
 35 *contract:*

36 (1) Those contracts are entered into pursuant to the results of
 37 an open, competitive bidding process. One acceptable form for an
 38 open, competitive bid is a request for proposals (RFP). The
 39 commission shall deem reasonable any contract which is among
 40 33 percent of the lowest price bids, as determined by cumulative

1 quantity, that are received for a particular product in a given RFP
2 or other bidding process. An RFP shall be considered open and
3 competitive for a particular product if the request was distributed
4 to at least 15 potential suppliers, ~~offers are~~ *and there are*
5 *conforming offers* submitted by at least three suppliers, and notice
6 of the RFP was posted on the electrical corporation's Web site
7 concurrently with the distribution of the RFP, *subject to any*
8 *restriction or limitation established by the commission pursuant to*
9 *subdivision (a)*, or the transactions are entered into through
10 electricity exchanges or brokerage services which may also
11 include electronic platforms with access to more than 15 potential
12 suppliers.

13 (2) The contract was entered into by the electrical corporation
14 through the Independent System Operator, the Department of
15 Water Resources, the California Consumer Power and
16 Conservation Financing Authority, or any other market or
17 exchange recognized by the commission.

18 (3) Electrical corporations may enter into long-term forward
19 contracts outside of the process described in paragraphs (1) and
20 (2). Those contracts shall be subject to gains or losses according
21 to the incentive mechanism implemented by the commission
22 pursuant to subdivision (a).

23 (e) An electrical corporation may file a procurement plan for
24 the commission's review and approval. A procurement plan shall
25 define all of the following:

26 (1) The specific electricity and electricity related products
27 including type, quantity, duration, and timing of each product to
28 be procured.

29 (2) The standards to be used in evaluating those products.

30 (3) A process for review and approval or rejection by the
31 commission of contracts proposed by the electrical corporation
32 pursuant to the plan.

33 (f) Contracts entered into pursuant to a commission approved
34 procurement plan shall be deemed reasonable, shall be exempt
35 from reasonableness review, and may not be eligible for gains or
36 losses pursuant to the incentive mechanism implemented by the
37 commission pursuant to subdivision (a).

38 (g) It is anticipated that the electrical corporation will need to
39 enter into short-term transactions, either through the Independent
40 System Operator's short-term markets or third-party transactions,



1 in order to supplement long-term supply contracts, or to balance
2 the hourly load of its customers. Until the commission develops a
3 benchmark that can be used for short-term procurement
4 transactions in an incentive mechanism, these transactions by an
5 electrical corporation shall be deemed reasonable. The
6 commission may not adopt any benchmark for short-term
7 electricity purchases unless that benchmark reasonably represents
8 the market price of short-term purchases taking into account the
9 timing of the purchases, the duration of the purchases, the location
10 of delivery of the purchases, and other factors that are relevant to
11 reasonably estimating market price.

12 (h) At least 180 days prior to an electrical corporation resuming
13 procurement responsibility, the commission shall develop a
14 process allowing electrical corporations to enter into financial and
15 other contracts to moderate the price risk associated with serving
16 its customers, including the price risk embedded in its long-term
17 supply contracts. If the commission fails to adopt a process within
18 the time prescribed, electrical corporations may enter into
19 financial and other contracts to moderate the price risk associated
20 with its procurement portfolio. The contracts may be gas-based or
21 electricity-based. The contracts and the prices and premiums paid
22 by the electrical corporations for the contracts shall also be deemed
23 reasonable if the contracts are entered into by the electrical
24 corporation for the purpose of hedging the price risk associated
25 with the electrical corporation's procurement portfolio.

26 (i) A purchase transaction entered into between an electrical
27 corporation and a renewable energy developer shall be deemed
28 reasonable if contract prices to the electrical corporation for
29 renewable energy are less than 115 percent of the average of the
30 lowest bid established pursuant to paragraph (1) of subdivision (d).
31 Any transaction entered into at market-based rates by an electrical
32 corporation shall be deemed reasonable if the contract price to the
33 electrical corporation is less than the incremental cost of the
34 corporation's retained generation and contractual energy
35 resources, where that generation and those resources can be
36 reduced in output by an amount greater than or equal to the amount
37 purchased.

38 (j) It is anticipated that the electrical corporations will need to
39 procure from the Independent System Operator and third parties,
40 or self-provide, ancillary and other related services, and be subject

1 to charges by the Independent System Operator or its successor for
2 imbalance energy, congestion charges, unaccounted-for-energy
3 charges, neutrality adjustment charges, and grid management
4 charges. Until the commission develops a benchmark that can be
5 used for ancillary service, and other related services and charges
6 that may be imposed by the Independent System Operator or its
7 successor in an incentive mechanism, the costs incurred by an
8 electrical corporation shall be deemed reasonable.

9 (k) It is anticipated that the electrical corporation will incur
10 costs in connection with its procurement and risk management
11 functions needed to serve its customers. These costs include the
12 cost of staffing these functions as well as the cost of acquiring the
13 maintaining systems needed to analyze, track, settle, and make
14 payments pursuant to supply and hedging contracts, and the cost
15 of meeting credit and collateral requirements. The costs incurred
16 by an electrical corporation shall be recoverable in rates.

17 (l) Under the protection of Section 583, each electrical
18 corporation shall file quarterly with the commission its long-term
19 forward contracts and financial contracts, together with an
20 explanation of how those contracts meet the guidelines set forth in
21 this section. The commission may verify the accuracy of these
22 submissions for the sole purpose of ensuring compliance with
23 these guidelines.

24 (m) The commission shall adopt a ratemaking mechanism that
25 ensures that the existing customers as of the date an electrical
26 corporation enters into a bilateral contract to serve those customers
27 remain responsible for, and pay, their proportionate share of the
28 electrical corporation's obligations under each contract.

